IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
FIRST APPEAL NO.848 OF 1991

The State of Maharashtra,)
at the instance of the Special)
Land Acquisition Officer,)
Metro Centre No.5, Panvel,)
District - Raigad.).. Appellant.

Vs.

1. Mahamadalli Imamuddin Patel,)
since deceased, through legal)
representatives:)

1-A Nazir Ahmad Mohammed Ahmad Patel)

1-B Mohd.Umar Mohammed Ali Patel,)
both adults, residing at)
Taloja, Taluka Panvel,)
District - Raigad.)

2. Smt.Fatimabi Ibrahim Patel,)
since deceased, through her)
Legal representatives:)

2-A Mahamad Yusuf Ibrahim Patel,)
Adult, residing at Taloja,)
Taluka Panvel,)
District - Raigad.)

2-B Ayeshabibi Amir Patel,)

2-B1 Gaffar Amir Patel,)

2-B2 Nazir Amir Patel,)

2-B3 Nissar Amir Patel,)

2-B4 Rais Amir Patel,)

2-B5 Miyaj Amir Patel,)
Applicants Nos.2-B-1 to)
2-B-5 adults, residing at)
Owe, Taluka Panvel,)
District - Raigad.)

2-C Maimuna Abumiya Patel,)

2-D Karima Mahamad Amin Patel,)

2-E Halimabibi Abdul Latif Patel,)
Applicants Nos.2-C to 2-E)
adults, residing at Taloja,)
Taluka Panvel,)
District - Raigad.)

3. Mahmudmiya Mohamad Ibrahim)
Patel,)

4. Ahamadmiya Mahamad Ibrahim)
Patel,)

5. Abdul Hameed Mohamad Ibrahim)
Patel,)

6. Yakub Mohamad Ibrahim Patel,)

7. Julekha Mohamad Hanir Patel,)

8. Ajija Abdul Hamid Patel,)

9. Khatija Abdul Hamid Patel,)

10. Smt.Jaitunbi Ibrahim Patel,)
since deceased, through her)
Legal representatives,)
Nos.3 to 9, residing at)
Taloja, Taluka - Panvel,)
Dist.Raigad.).. Respondents

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Ms G.P.Mulekar, AGP for the appellant-State.

Shri R.S.Datar for the Respondents.

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WITH

CROSS OBJECTION (ST) NO.6416 OF 1992
IN
FIRST APPEAL NO.848 OF 1991

1. Mahamadalli Imamuddin Patel,)

since deceased, through legal)
representatives:)

1-A Nazir Ahmad Mohammed Ahmad Patel)

1-B Mohd.Umar Mohammed Ali Patel,)
both adults, residing at)
Taloja, Taluka Panvel,)
District - Raigad.)

2. Smt.Fatimabi Ibrahim Patel,)
since deceased, through her)
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2-A Mahamad Yusuf Ibrahim Patel,)
Adult, residing at Taloja,)
Taluka Panvel, District-Raigad.)

2-B Ayeshabibi Amir Patel,)

2-B1 Gaffar Amir Patel,)

2-B2 Nazir Amir Patel,)

2-B3 Nissar Amir Patel,)

2-B4 Rais Amir Patel,)

2-B5 Miyaj Amir Patel,)
Applicants Nos.2-B-1 to)
2-B-5 adults, residing at)
Owe, Taluka Panvel,)
District - Raigad.)

2-C Maimuna Abumiya Patel,)

2-D Karima Mahamad Amin Patel,)

2-E Halimabibi Abdul Latif Patel,)
Applicants Nos.2-C to 2-E)
adults, residing at Taloja,)
Taluka Panvel,)
District - Raigad.)

3. Mahmudmiya Mohamad Ibrahim)
Patel,)

4. Ahamadmiya Mahamad Ibrahim)
Patel,)

5. Abdul Hameed Mohamad Ibrahim)

Patel,)

6. Yakub Mohamad Ibrahim Patel,)

7. Julekha Mohamad Hanir Patel,)

8. Ajija Abdul Hamid Patel,)

9. Khatija Abdul Hamid Patel,)

10. Smt.Jaitumbi Abdul Hamid Patel,)
since deceased through her)
Legal representatives)
Nos.3 to 9, residents of)
Taloja, Taluka - Panvel,)
Dist.-Raigad.).. Appellants.

Vs.

The State of Maharashtra,)
at the instance of the Special)
Land Acquisition Officer,)
Metro Centre No.5, Panvel,)
District - Raigad.).. Respondent

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Shri R.S.Datar for the Appellants.

Ms G.P.Mulekar, AGP for the Respondent-State.

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CORAM : R.M.S.KHANDEPARKAR &
V.M.KANADE, JJ.

DATED : 29TH SEPTEMBER, 2005.

ORAL JUDGMENT : (PER R.M.S.KHANDEPARKAR, J)

1. Heard. The appellant-State challenges the judgment and award dated 5th April, 1990 passed by the Reference Court in the Land Acquisition Reference No.284 of 1987 on various grounds. It is not

necessary to refer to all those grounds and suffice to refer only one ground which goes to the root of the matter and relates to the absence of jurisdiction of the Reference Court to entertain the reference.

2. Few facts relevant for the decision are that the notification under Section 4 of the Land Acquisition Act, 1894, hereinafter called as "the said Act", was issued on 3rd February, 1970. It was published on 7th September, 1970 and the award under Section 11 was declared on 28th July, 1986. The notice under Section 12(2) was received by the claimants on 30th August, 1986. The reference application was filed on 23rd October, 1986.

3. It is the case of the appellant-State that the reference application was filed by the claimants-respondents beyond the period of limitation prescribed under Section 18 of the said Act and therefore, neither the Collector could have referred the matter for adjudication to the Reference Court nor the reference Court could have entertained the proceedings in the matter on account of bar of limitation prescribed under Section 18 of the said Act. It is the contention of the learned advocate for the Government that the Collector is not the Court,

and therefore, has no power to condone the delay and any reference made beyond the period of limitation is ab-initio, bad-in-law and without any jurisdiction and the Reference Court also did not have jurisdiction to entertain the proceedings.

4. On the other hand, the learned advocate appearing on behalf of the claimants-respondents submitted that, pursuant to the receipt of the notice under Section 12(2) of the said Act, the claimants had applied for certified copy of the award in order to know the contents of the award as the claimants wanted to file application for enhancement of compensation, and therefore, they wanted to know the basis on which the award was made by the Land Acquisition Officer. Accordingly, the application for certified copy of the award was filed on 2nd September, 1986. The certified copy of the award was made available to the claimants on 20th October, 1986. Within three days thereafter, the reference application was filed, and therefore, the reference was within the time and hence, the Reference Court had jurisdiction to entertain the reference proceedings.

5. The law on the point that the Collector entertaining the application for reference under

Section 18 of the said Act is not the Court, and therefore, has no power to condone the delay is well settled by a catena of judgments of this Court as well as of the Apex Court. Once it is clearly established that the referring authority had no jurisdiction to refer the matter, it follows that the authority, to which the matter is referred by such authority, would be acting without jurisdiction. Once it is apparent that the Collector had no jurisdiction to refer the matter on account of lapse of time, the reference made after a lapse of time would be without jurisdiction, and therefore, the Reference Court also could not have entertained the reference. Considering this settled position in law therefore, it is abundantly clear that the reference application was filed beyond the period of six weeks from the date of receipt of the notice under Section 12(2) of the said Act by the claimants, and hence barred by law of limitation prescribed under Section 18 of the said Act.

6. The reference proceedings under Section 18 are the original proceedings and are not the appellate proceedings. For the purpose of filing the reference application, certified copy of the award is not necessary. Besides, the notice under Section 12(2) does disclose the identity of the acquired land along

with its area and rate at which the compensation has been awarded and total amount of compensation. It cannot be said that the party cannot file reference application under Section 18 without perusing the award under Section 11 of the said Act. It is essentially for the claimants to establish the claim under section 18 and whatever is the offer by the Land Acquisition Officer under Section 11, it is immaterial for the purpose of establishing the claim of the claimants. The award under Section 11 is also not a piece of evidence. Therefore, non-availability of the certified copy of the award cannot be a justification for extension of period of limitation, apart from the fact that the statutory provisions nowhere permit such extension of the period of limitation prescribed under Section 18 of the said Act.

7. The learned advocate for the Government is justified in relying upon the decision of the Full Bench of this Court in **Suresh Marutrao Jadhav v. State of Maharashtra & Anr.,** reported in 2001 103(4) BLR 897 on the point of absence of jurisdiction to the Collector to entertain application under Section 18 after the provisions of limitation prescribed thereunder. The Full Bench of this Court clearly held that the provisions of Limitation Act do not apply to

such proceedings.

8. For the reasons stated above, therefore, the reference being made and entertained without jurisdiction, the entire proceedings before the Reference Court in the case in hand are to be held to be without jurisdiction, bad-in-law and not maintainable. Hence, the appeal filed by the State is allowed on the above limited ground. The impugned judgment and award dated 5th April, 1990 passed by the Reference Court accordingly is quashed and set aside. The cross objections are therefore dismissed. There shall be no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(V.M.KANADE, J)